

§ 149.1 Authority and purpose.

(a) *Authority.* This part is issued by the Federal Deposit Insurance Corporation (FDIC) and the Secretary of the Department of the Treasury (Treasury) under section 210(n)(7) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act).

(b) *Purpose.* The purpose of this part is to issue implementing regulations as required by the Act. The part governs the calculation of the maximum obligation limitation which limits the aggregate amount of outstanding obligations the FDIC may issue or incur in connection with the orderly liquidation of a covered financial company.

§ 149.2 Definitions.

As used in this part:

Fair value. The term “fair value” means the expected total aggregate value of each asset, or group of assets that are managed within a portfolio of a covered financial company on a consolidated basis if such asset, or group of assets, was sold or otherwise disposed of in an orderly transaction.

Most recent financial statement available. (1) The term “most recent financial statement available” means a covered financial company’s—

(i) Most recent financial statement filed with the Securities and Exchange Commission or any other regulatory body;

(ii) Most recent financial statement audited by an independent CPA firm; or

(iii) Other available financial statements.

(2) The FDIC and the Treasury will jointly determine the most pertinent of the above financial statements, taking into consideration the timeliness and reliability of the statements being considered.

Obligation. The term “obligation” means, with respect to any covered financial company—

(1) Any guarantee issued by the FDIC on behalf of the covered financial company;

(2) Any amount borrowed pursuant to section 210(n)(5)(A) of the Act; and

(3) Any other obligation with respect to the covered financial company for which the FDIC has a direct or contingent liability to pay any amount.

Total consolidated assets of each covered financial company that are available for repayment. The term “total consolidated assets of each covered financial company that are available for repayment” means the difference between:

(1) The total assets of the covered financial company on a consolidated basis that are available for liquidation during the operation of the receivership; and

(2) To the extent included in paragraph (1) of this definition, all assets that are separated from, or made unavailable to, the covered financial company by a statutory or regulatory barrier that prevents the covered financial company from possessing or selling assets and using the proceeds from the sale of such assets.

§ 149.3 Maximum obligation limitation.

The FDIC shall not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding for each covered financial company would exceed—

(a) An amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the FDIC as receiver (or a shorter time period if the FDIC has calculated the amount described under paragraph (b) of this section); and

(b) The amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in paragraph (a) of this section.

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AUTHORITY: 12 U.S.C. 5345; 31 U.S.C. 321.

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SOURCE: 77 FR 29894, May 21, 2012, unless otherwise noted.

§ 150.1 Scope.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 5345.

§ 150.2 Definitions.

As used in this part:

Assessed company means:

(1) A bank holding company that has \$50 billion or more in total consolidated assets, based on the average of total consolidated assets as reported on the bank holding company's four most recent quarterly Consolidated Financial Statements for Bank Holding Companies (or, in the case of a foreign banking organization, based on the average of total assets at end of period as reported on such company's four most recent quarterly Capital and Asset Information for the Top-tier Consolidated Foreign Banking Organization submissions if filed quarterly, or two most recent annual submissions if filed annually, as appropriate); or

(2) A nonbank financial company required to be supervised by the Board under section 113 of the Dodd-Frank Act.

Assessment basis means, for a given assessment period, an estimate of the total expenses that are necessary or appropriate to carry out the responsibilities of the Office and the Council as set out in the Dodd-Frank Act (including an amount necessary to reimburse reasonable implementation expenses of the Corporation that shall be treated as expenses of the Council pursuant to section 210(n)(10) of the Dodd-Frank).

Assessment fee rate, with regard to a particular assessment period, means the rate published by the Department for the calculation of assessment fees for that period.

Assessment payment date means:

(1) For the initial assessment period, July 20, 2012;

(2) For any semiannual assessment period ending on March 31 of a given calendar year, September 15 of the prior calendar year; and

(3) For any semiannual assessment period ending on September 30 of a

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given calendar year, March 15 of the same year.

Assessment period means any of:

(1) The initial assessment period; or

(2) Any semiannual assessment period.

Bank holding company means:

(1) A bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

(2) A foreign banking organization.

Board means the Board of Governors of the Federal Reserve System.

Corporation means the Federal Deposit Insurance Corporation.

Council means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act.

Department means the Department of the Treasury.

Determination date means:

(1) For the initial assessment period, December 31, 2011.

(2) For any semiannual assessment period ending on March 31 of a given calendar year, May 31 of the prior calendar year.

(3) For any semiannual assessment period ending on September 30 of a given calendar year, November 30 of the prior calendar year.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Foreign banking organization means a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

Initial assessment period means the period of time beginning on July 20, 2012 and ending on March 31, 2013.

Office means the Office of Financial Research established by section 152 of the Dodd-Frank Act.

Semiannual assessment period means:

(1) Any period of time beginning after the initial assessment period on October 1 and ending on March 31 of the following calendar year; or

(2) Any period of time beginning after the initial assessment period on April 1 and ending on September 30 of the same calendar year.

Total assessable assets means:

(1) For a bank holding company other than a foreign banking organization,

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the average of total consolidated assets for the four quarters preceding the determination date, as reported on the bank holding company's four most recent FR Y-9C filings;

(2) For any other bank holding company that has \$50 billion or more in total consolidated assets, the average of the company's total assets of combined U.S. operations for the four quarters preceding the determination date, based on the combined total assets of the foreign banking organization's U.S. branches, agencies, and subsidiaries as reported on the foreign banking organization's four most recent quarterly financial reports, or, if the company only files financial reports annually, the average of the company's total assets of combined U.S. operations for the two years preceding the determination date, based on the combined total assets of the foreign banking organization's U.S. branches, agencies, and subsidiaries as reported on the foreign banking organization's two most recent annual financial reports; or

(3) For a nonbank financial company supervised by the Board under section 113 of the Dodd-Frank Act, either the average of total consolidated assets for the four quarters preceding the determination date, if the company is a U.S. company, or the average of total assets of combined U.S. operations for the four quarters preceding the determination date, if the company is a foreign company.

§ 150.3 Determination of assessed companies.

(a) The determination that a bank holding company or a nonbank financial company is an assessed company will be made by the Department.

(b) The Department will apply the following principles in determining whether a company is an assessed company:

(1) For tiered bank holding companies for which a holding company owns or controls, or is owned or controlled by, other holding companies, the assessed company shall be the top-tier, regulated holding company.

(2) In situations where more than one top-tier, regulated bank holding company has a legal authority for control of a U.S. bank, each of the top-tier reg-

ulated holding companies shall be designated as an assessed company.

(3) In situations where a company has not filed four consecutive quarters of the financial reports referenced above for the most recent quarters (or two consecutive years for annual filers of the FR Y-7Q or successor form), such as may be true for companies that recently converted to a bank holding company, the Department will use, at its discretion, other financial or annual reports filed by the company, such as Securities and Exchange Commission (SEC) filings, to determine a company's total consolidated assets.

(4) In situations where a company does not report total consolidated assets in its public reports or where a company uses a financial reporting methodology other than U.S. GAAP to report on its U.S. operations, the Department will use, at its discretion, any comparable financial information that the Department may require from the company for this determination.

(c) Any company that the Department determines is an assessed company on a given determination date will be an assessed company for the entire assessment period related to such determination date, and will be subject to the full assessment fee for that assessment period, regardless of any changes in the company's assets or other attributes that occur after the determination date.

§ 150.4 Calculation of assessment basis.

(a) For the initial assessment period, the Department will calculate the assessment basis such that it is equivalent to the sum of:

(1) Budgeted operating expenses for the Office for the period beginning July 21, 2012 and ending March 31, 2013;

(2) Budgeted operating expenses for the Council for the period beginning July 21, 2012 and ending March 31, 2013;

(3) Capital expenses for the Office for the period beginning July 21, 2012 and ending April 30, 2013; and

(4) Capital expenses for the Council for the period beginning July 21, 2012 and ending April 30, 2013; and

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(5) An amount necessary to reimburse reasonable implementation expenses of the Federal Deposit Insurance Corporation as provided under section 210(n)(10) of the Dodd-Frank Act.

(b) For each subsequent assessment period, the Department will calculate an assessment basis that shall be sufficient to replenish the Financial Research Fund to a level equivalent to the sum of:

(1) Budgeted operating expenses for the Office for the applicable assessment period;

(2) Budgeted operating expenses for the Council for the applicable assessment period;

(3) Budgeted capital expenses for the Office for the 12-month period beginning on the first day of the applicable assessment period;

(4) Budgeted capital expenses for the Council for the 12-month period beginning on the first day of the applicable assessment period; and

(5) An amount necessary to reimburse reasonable implementation expenses of the Federal Deposit Insurance Corporation as provided under section 210(n)(10) of the Dodd-Frank Act.

§ 150.5 Calculation of assessments.

(a) For each assessed company, the Department will calculate the total assessable assets in accordance with the definition in § 150.2.

(b) The Department will allocate the assessment basis to the assessed companies in the following manner:

(1) Based on the sum of all assessed companies' total assessable assets, the Department will calculate the assessment fee rate necessary to collect the assessment basis for the applicable assessment period.

(2) The assessment payable by an assessed company for each assessment period shall be equal to the assessment fee rate for that assessment period multiplied by the total assessable assets of such assessed company.

(3) Foreign banking organizations with less than \$50 billion in total assessable assets shall not be assessed.

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§ 150.6 Notice and payment of assessments.

(a) No later than fifteen calendar days after the determination date (or, in the case of the initial assessment period, no later than seven days after the publication date of this rule), the Department will send to each assessed company a statement that:

(1) Confirms that such company has been determined by the Department to be an assessed company; and

(2) States the total assessable assets that the Department has determined will be used for calculating the company's assessment.

(b) If a company that is required to make an assessment payment for a given semiannual assessment period believes that the statement referred to in paragraph (a) of this section contains an error, the company may provide the Department with a written request for a revised statement. Such request must be received by the Department via email within one month and must include all facts that the company requests the Department to consider. The Department will respond to all such requests within 21 calendar days of receipt thereof.

(c) No later than the 14 calendar days prior to the payment date for a given assessment period, the Department will send an electronic billing notification to each assessed company, containing the final assessment that is required to be paid by such assessed company.

(d) For the purpose of making the payments described in § 150.5, each assessed company shall designate a deposit account for direct debit by the Department through *www.pay.gov* or successor Web site. No later than the later of 30 days prior to the payment date for an assessment period, or the effective date of this rule, each such company shall provide notice to the Department of the account designated, including all information and authorizations required by the Department for direct debit of the account. After the initial notice of the designated account, no further notice is required unless the company designates a different account for assessment debit by the Department, in which case the requirements of the preceding sentence apply.

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(e) Each assessed company shall take all actions necessary to allow the Department to debit assessments from such company's designated deposit account. Each such company shall, prior to each assessment payment date, ensure that funds in an amount at least equal to the amount on the relevant electronic billing notification are available in the designated deposit account for debit by the Department. Failure to take any such action or to provide such funding of the account shall be deemed to constitute non-payment of the assessment. The Department will cause the amount stated in the applicable electronic billing notification to be directly debited on the appropriate payment date from the deposit account so designated.

(f) In the event that, for a given assessment period, an assessed company materially misstates or misrepresents any information that is used by the Department in calculating that company's total assessable assets, the Department may at any time re-calculate the assessment payable by that company for that assessment period, and the assessed company shall take all actions necessary to allow the Department to immediately debit any additional payable amounts from such assessed company's designated deposit account.

(g) If a due date under this section falls on a date that is not a business day, the applicable date shall be the next business day.

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